



1           Shortly after plaintiff was promoted to Case Manager on April 30, 2011, performance  
2 issues surfaced. On May 9, 2011, plaintiff received a Letter of Concern for his failure to  
3 timely complete clinical paperwork. On February 6, 2012, he received another Letter of  
4 Concern, this time for his failure to comply with Horizon's requirements regarding  
5 paperwork corrections. On February 9, 2012, plaintiff was placed on a formal Plan of  
6 Correction when it was discovered that he had taken steps to adopt a foster child who was  
7 a Horizon client. Plaintiff had spoken with the child, the child's foster parents, and Child  
8 Protective Services about adopting the child, all without informing his supervisor of his  
9 plans. As a result, Horizon was forced to terminate plaintiff's professional relationship with  
10 the child and the child's foster family.

11           As a condition of the formal Plan of Correction, plaintiff was placed on disciplinary  
12 probation and was required to receive individual supervision focused on employee conduct,  
13 dual relationships, and professional boundaries. Plaintiff was told that failure to complete  
14 the Plan of Correction would result in termination of his employment.

15           On March 23, 2012, while plaintiff was still on probation and under the Plan of  
16 Correction, plaintiff's son became ill and was hospitalized for four months. As a result of  
17 his son's illness, plaintiff requested and was granted intermittent leave. Horizon altered  
18 plaintiff's work schedule so that he only worked three days a week. Plaintiff's son's hospital  
19 bills exceeded \$200,000 a month.

20           In May 2012, plaintiff asked to be taken off probation. However, Horizon's CEO,  
21 Norman Mudd, extended plaintiff's probation until July 9, 2012, explaining that because  
22 plaintiff was working three days a week during much of the probation period, Horizon  
23 wanted more time to evaluate him. On June 14, 2012, plaintiff's coworker was promoted to  
24 the position of Program Coordinator.

25           In June 2012, Horizon discovered that plaintiff had misrepresented that he was  
26 authorized to oversee a client's court-ordered community service. Plaintiff knowingly  
27 created false documents representing to the client's probation officer that the client had  
28 performed community service work on specific days. As a result, plaintiff was terminated

1 effective June 25, 2012. Plaintiff filed a charge of discrimination with the EEOC on July 17,  
2 2012, alleging that he was fired because of the cost of his son's illness on Horizon's health  
3 plan.

4 After plaintiff was terminated, the local newspapers in Payson began running articles  
5 about plaintiff and his termination. On July 11, 2012, the Payson Roundup published an  
6 article stating that plaintiff "was fired for allegedly seeking to adopt a foster child he had  
7 counseled," and that plaintiff suspected that the cost of his son's healthcare on Horizon's  
8 healthcare plan played a role in his termination. DSOF ¶ 27. The Payson Roundup  
9 published a second article on July 31, 2012, stating that plaintiff "believes he was fired  
10 because [his son's] medical crisis put an incredible strain on the company's medical  
11 insurance, which will certainly increase its insurance premiums." DSOF ¶ 28. Plaintiff also  
12 began posting comments on his Facebook page accusing Horizon of terminating him because  
13 of his son's medical bills.

14 On August 21, 2012, Horizon filed a defamation lawsuit against plaintiff in the  
15 Superior Court of Arizona in Gila County. On October 18, 2012, plaintiff filed this action  
16 against Horizon.

## 17 II. ADA Discrimination

18 Plaintiff alleges "association discrimination" under the Americans With Disabilities  
19 Act. He contends that Horizon discriminated against him because of his association with his  
20 son who has a disabling condition. The ADA prohibits employers from "excluding or  
21 otherwise denying equal jobs or benefits to a qualified individual because of the known  
22 disability of an individual with whom the qualified individual is known to have a relationship  
23 or association." 42 U.S.C. § 12112(b)(4). Title VII governs the analytical framework of the  
24 ADA. Raytheon Co. v. Hernandez, 540 U.S. 44, 49, 124 S. Ct. 513, 517 (2003); Budnick v.  
25 Town of Carefree, 518 F.3d 1109, 1113-14 (9th Cir. 2008). Therefore, in order to establish  
26 a prima facie claim of association discrimination under the ADA, plaintiff must show: (1) he  
27 was qualified to perform the job; (2) his employer knew he had a relative or associate with  
28 a disability; (3) he was subjected to an adverse employment action; and (4) there is a causal

1 connection between the adverse employment action and the employee's association with a  
2 disabled person. See Den Hartog v. Wasatch Academy, 129 F.3d 1076, 1085 (10th Cir.  
3 1997); E.R.K. ex rel. R.K. v. Hawaii Dept. of Educ., 728 F.3d 982, 992 (9th Cir. 2013).

4 Once a plaintiff establishes a prima facie case of discrimination, the burden shifts to  
5 the defendant to provide a legitimate, nondiscriminatory reason for the adverse employment  
6 action. Pardi v. Kaiser Found. Hosps., 389 F.3d 840, 849 (9th Cir. 2004). The burden then  
7 shifts back to the plaintiff to "demonstrate a triable issue of fact as to whether such reasons  
8 are pretextual." Id. Plaintiff must offer specific and substantial evidence of pretext in order  
9 to survive summary judgment. Noyes v. Kelly Servs., 488 F.3d 1163, 1170 (9th Cir. 2007).  
10 An employer is only required to offer its honest reasons for its actions, even if the reasons  
11 are "foolish, trivial or even baseless." Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054,  
12 1063 (9th Cir. 2002).

13 Plaintiff claims that he suffered three adverse employment actions—his probation was  
14 extended, he was not given a promotion, and his employment was terminated. To establish  
15 his prima facie case, plaintiff shows that he was qualified to perform his job, Horizon knew  
16 that his son was hospitalized, and he was subjected to adverse employment actions. Plaintiff  
17 has not established, however, any causal connection between the adverse employment actions  
18 and his association with his disabled son. He speculates that Horizon acted in order to  
19 minimize the financial burden on its health insurance program, but he offers no evidence to  
20 support the claim. Plaintiff cannot establish a prima facie case of discrimination based on  
21 speculation. Even if we assume that plaintiff has satisfied the relatively minimal burden of  
22 establishing a prima facie case, we would nevertheless conclude that he has not presented  
23 "specific and substantial" evidence showing that Horizon's reasons for its actions were  
24 pretext for discrimination.

25 When plaintiff began receiving Letters of Concern and was first placed on the formal  
26 Plan of Correction and probation, his son was not ill. Thus, plaintiff acknowledges that these  
27 disciplinary actions were not the result of any illegal motive by Horizon. DSOF ¶ 14.  
28 Horizon asserts that plaintiff's probation was extended for an additional two months because

1 he was only working part-time throughout most of the original probation period. He was  
2 passed over for promotion because he was on probation and therefore not eligible for a  
3 promotion, and because he had not applied for the position. And he was terminated from  
4 employment because he created false community service records for a client. These are all  
5 legitimate, nondiscriminatory reasons for Horizon's actions. Therefore, plaintiff bears the  
6 burden to show, with specific and substantial facts, that Horizon's reasons are merely pretext  
7 for discrimination.

8 To show pretext, plaintiff argues that his probation was extended to keep him from  
9 accessing his benefits and to make it easier to fire him. PCSO ¶ 20. But this reason is  
10 unrelated to his association with his disabled son and accordingly defeats his ADA  
11 association claim. He also speculates that Horizon terminated him in order to reduce the  
12 impact of his son's medical bills on Horizon's insurance premium. He contends that Horizon  
13 has a long history of firing employees who get sick and use the company health plan. But  
14 one of the individuals he alleges was forced to quit because of her disability was never  
15 released to work by her doctor, and another employee was not enrolled in the company's  
16 health plan. DSOF ¶ 42. Plaintiff's speculation about the reasons for Horizon's actions is  
17 insufficient to defeat summary judgment.

18 With respect to the failure to promote claim, plaintiff argues that the individual who  
19 was promoted, Raymond Dion, was less qualified for the promotion. However, defendants  
20 show that plaintiff was on a corrective action plan at the time of the promotion, and therefore  
21 he was ineligible for promotion. Moreover, while plaintiff had applied for the position when  
22 it was previously open, he did not submit an application for the current opening. His  
23 argument that his original application "still stood," Response at 2, is unsupported.

24 With regard to the termination claim, plaintiff asserts that, although he admittedly  
25 fabricated the dates on the community service forms, the client nevertheless actually  
26 performed the community service work. But it is undisputed that plaintiff made a  
27 deliberately false report with regard to a client's community service forms. Plaintiff  
28 acknowledged that he "did not want to waste hours looking through hundreds of notes to find

exact dates.” DSOF ¶ 25. His own belief that his actions were justified does not create a triable issue of pretext.

Plaintiff has failed to raise a genuine issue of fact demonstrating that Horizon’s reasons for the extended probation, the refusal to promote, or the termination were a mere pretext for discrimination. Absent any evidence that Horizon’s decision was for discriminatory reasons, plaintiff’s ADA discrimination claims cannot survive summary judgment.

### III. ADA Retaliation

Plaintiff also argues that Horizon retaliated against him because he filed an ADA discrimination claim with the EEOC after he was terminated. He contends that as a result of the EEOC discrimination charge, Horizon filed a defamation lawsuit against him and ordered an investigation into a cell phone video of an altercation between plaintiff, his wife, and their child, which was viewed by Horizon employees. Horizon eventually reported the actions of plaintiff and his wife to Child Protective Services. Plaintiff had not worked for Horizon for over six weeks when Horizon took these alleged retaliatory actions. Amended Compl. ¶ 77.

To establish a prima facie claim for ADA retaliation, plaintiff must show that (1) he engaged in protected activity, (2) he was subjected to an adverse employment action, and (3) there was a causal link between the protected activity and the employer’s actions. Brown v. City of Tucson, 336 F.3d 1181, 1187 (9th Cir. 2003). The Supreme Court has recently held that Title VII retaliation claims “must be proved according to traditional principles of but-for causation.” Univ. of Texas Sw. Med. Ctr. v. Nassar, 133 S. Ct. 2517, 2533 (2013). “This requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer.” Id. Although the Ninth Circuit has not had an occasion to apply Nassar to ADA retaliation claims, the court has consistently applied the Title VII framework to ADA retaliation claims. Accordingly, ADA retaliation claims are properly subject to a but-for causation standard. See Barnett v. U.S. Air, Inc., 228 F.3d 1105, 1121 (9th Cir. 2000) (adopting the Title VII framework for ADA retaliation claims), vacated

1 on other grounds sub nom. U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002). Plaintiff must  
2 show that the filing of his EEOC complaint was the but-for cause of Horizon's decision to  
3 send him a demand letter, sue him for defamation, and investigate and report him to Child  
4 Protective Services.

5 Plaintiff has not demonstrated that Horizon would not have filed the defamation action  
6 but for plaintiff's filing of the EEOC charge. Instead, the undisputed evidence shows that  
7 after his termination plaintiff had begun a campaign to disparage Horizon on Facebook and  
8 through the local newspaper, accusing Horizon of terminating him because of his son's  
9 illness. Horizon also shows that as a behavioral health organization, it has a policy of  
10 reporting any potential child abuse that it discovers. Plaintiff's own speculation that Horizon  
11 filed the lawsuit or reported suspected child abuse because of the EEOC charge is neither  
12 specific nor substantial, and in no way undermines the reason proffered by Horizon for its  
13 actions. Defendants' motion for summary judgment on the ADA retaliation claim is granted.

#### 14 **IV. ERISA**

15 Plaintiff's ERISA claim is premised on the same facts underlying his ADA claims.  
16 He speculates that Horizon terminated him because of the high costs associated with his  
17 son's medical care.

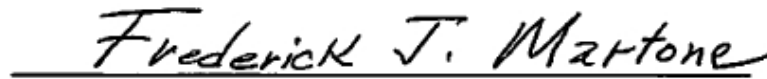
18 ERISA prohibits employers from discharging employees for exercising their rights  
19 under an employee benefits plan or from interfering with the attainment of a right that they  
20 may become entitled to under the plan. 29 U.S.C. § 1140. In order to prevail on a § 1140  
21 claim, a claimant must show that his employment was terminated because of a specific intent  
22 to interfere with ERISA rights. Dytrt v. Mountain States Tel. & Tel. Co., 921 F.2d 889, 896  
23 (9th Cir. 1990). "[N]o action lies where the alleged loss of rights is a mere consequence, as  
24 opposed to a motivating factor behind the termination." Id.

25 Here, the undisputed evidence shows that plaintiff was terminated after he falsified  
26 paperwork. Other than plaintiff's own speculation, there is no evidence that plaintiff was  
27 terminated because of his son's medical care. Summary judgment is granted in favor of  
28 defendants on plaintiff's ERISA claim.

**V. Conclusion**

**IT IS ORDERED GRANTING** defendants' motion for summary judgment (doc. 42).  
The clerk shall enter final judgment.

DATED this 19<sup>th</sup> day of March, 2014.



Frederick J. Martone  
Senior United States District Judge